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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7890 OF 2003

1. Union of India, through)
The General Manager, Central)
Railway, C.S.T.)

2 Divisional Railway Manager,)
Central Railway, Mumbai)
Division, Mumbai.)

3. Senior Divisional Personnel)
Officer, Central Railway,)
Mumbai Division, Mumbai.)

versus

M.H. Nathani, working as)
Conductor (COR),under Divisional)
Railway Manager, Central Railway)
Manager, Mumbai Division, Mumbai)
and residing at 204, 2nd floor,)
Johny Market Bldg., Near Venue)
Cinema, Ulasnagar - 4.)

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Mr. Sureshkumar for the petitioners.

Mr. S.R. Sawant for the respondent.

CORAM: V.G. PALSHIKAR & @@
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SMT. RANJANA DESAI, JJ.@@
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DATED: 10TH AUGUST, 2004.@@
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JUDGMENT:- (Per Smt. Ranjana Desai, J.)@@
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1. In this petition, the petitioners have challenged the order dated 2/7/2003 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai, in O.A. No.267 of 1999.

2. The case of the petitioners is that the respondent was working as Chief Ticket Inspector in the Punjab Mail running between Mumbai C.S.T. and Bhusawal. On 25/4/1996, during his duty, he accepted Rs.110/- (Rupees One Hundred and Ten only) from one Non Resident Indian Mr. Alok Gautam for giving berth in IInd A.C.

compartment. The Respondent, it was alleged, issued receipt of Rs.20/- (Rupees Twenty only) and balance of Rs.90/- (Rupees Ninety only) was pocketed by him being excess amount collected by him.

3. Senior Divisional Commercial Manager, Jhansi, who was also travelling in the same train was informed by his colleague about the incident. He called the respondent to his compartment. He made enquiry about the allegation made by Mr. Alok Gautam. Mr. Alok Gautam was also present in the compartment. According to the petitioners, in the presence of Mr. Alok Gautam, the respondent returned the money i.e. Rs.90/- collected by him from Mr. Alok Gautam. An examination was conducted in the presence of the respondent and it was found that the respondent was having Rs.89/- (Rupees Eighty Nine only) in his possession, which was in excess of the amount, which he should be having with him.

4. Charge sheet dated 5/7/1996 was issued to the respondent. The charge sheet contained the following charges:

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"ARTICLE : I.

Shri M.H. Nathani COR did not report for his duty in time at CSTM Station.

ARTICLE : II.

Shri M.H. Nathani, demanded and accepted Rs.110/- from the passenger while issuing EFT No.079127 for Rs.20/- of reservation fees without returning the balance amount for alloting berth No.17 in 2nd A/C.

ARTICLE : III.

Shri .H. Nathani did not declare his private cash in the EFT Book while, on duty on 25/4/1996.

Thus by his above acts of omission and commission Shri Nathani CTI, Mumbai failed to maintain absolute integrity and devotion to duty and acted in a manner un-becoming of a Railway Servant and thereby contravened Rule 3.1(i), (ii), (iii) of Railway service conduct Rules - 1968."

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5. The enquiry was conducted in accordance with the provisions of the relevant rules. According to the petitioners, sufficient opportunity was given to the respondent to defend himself in the enquiry. The inquiry officer recorded his findings. He held that the charges 1 and 3 were not established however, charge 2 was established.

6. The disciplinary authority, after considering the report of the inquiry officer, imposed on the respondent penalty of removal from service by his order dated 9/9/1998.

7. The respondent, thereafter, filed an appeal against the said order of removal dated 9/9/1998. The appellate authority by his order dated 30/11/1998 on humanitarian grounds set aside the penalty of removal from service. The respondent was reinstated but at the lowest of class III grade with future effect. The period between his removal from service and reinstatement was ordered to be treated as being without pay.

8. This order was challenged by the respondent before the Central Administrative Tribunal in O.A. No.267 of 1999. The Tribunal allowed the application and, hence, the petitioners have filed the present petition.

9. We have heard Mr. Sureshkumar, learned counsel appearing for the petitioners and Mr. Sawant, learned counsel appearing for the respondent, at some length.

10. Mr. Sureshkumar, the learned counsel for the petitioners contended that the tribunal is not a court of appeal. It could not have reappreciated the evidence and reached its own conclusion when the conclusion reached by the disciplinary authority and by the appellate authority was based on evidence and when there was no perversity attached to it. In this connection, he relied upon the judgments of the Supreme Court in Government of Tamil@@ EEEEEEEEEEEEEEEEEEE Nadu and another v. A. Rajapandian, (1995) 1 SCC 216;@@ EEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEE State of Tamil Nadu and another v. S. Subramaniam,@@ EEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEE (1996) 7 SCC 509. The learned counsel urged that the@@ EEEEEEEEEEEEEEEEE tribunal was wrong in coming to the conclusion that Charges 2 and 3 are co-related. He further contended that if the respondent had not taken any money from Mr. Alok Gautam, there was no occasion for him to return a sum of Rs.90/- to him in the presence of Senior Divisional Commercial Manager, Jhansi. He submitted that the statement of PW-2 R.B. Dixit, the then CCI (HQRS), JHS, was rightly relied upon by the disciplinary authority and by the lower appellate authority. There was no occasion for the tribunal to take a different view of the matter and, hence, the tribunal's order is liable to be set aside.

11. Mr. Sawant, the learned counsel appearing for the respondent, on the other hand urged that the lower appellate authority had not passed any reasoned order. Besides, the complainant Mr. Alok Gautam did not remain present in the enquiry. The inquiry officer having exonerated the respondent of Charges 1 and 3, Charge 2 can never be held to be proved against the respondent.

The tribunal's interference was, therefore, necessary as the inquiry officer's finding was based on no evidence.

12. We have considered the rival submissions. The inquiry officer has held that Charge 3 is not proved. That means the respondent did declare his private cash in EFT book while on duty on 25/4/1996. He had declared Rs.120/- as his private cash. Total amount of Rs.640/- was found with him. Admittedly, out of this amount, Rs.551/- was railway cash. The respondent's case is that out of his private cash, he had spent Rs.31/- on himself. If that is so, out of Rs.120/-, Rs.89/- will remain with him as his private cash. If the railway cash of Rs.551/- is added to it, we get the figure of Rs.640/-. Since Charge No.3 is not proved, the above simple calculation absolve the respondent of Charge No.2 as well. It is true that PW-2 R.B. Dixit, the then CCI (HQRS), JHS, has stated that the respondent returned Rs.89/- to Mr. Alok Gautam. But Mr. Alok Gautam, who is the complainant, did not attend the enquiry. In such a situation, having held that Charge 3, regarding non-declaration of his private cash, was not proved the inquiry officer could not have held the respondent guilty of Charge 2 of accepting Rs.110/- from Mr. Alok Gautam. The disciplinary authority's order based on the report of the inquiry officer can, therefore, be called perverse. Moreover, the appellate authority has not focussed his attention on the evidence at all. There is no indication in the appellate authority's order that he has done so. The appellate authority has merely accepted the finding of the inquiry officer and reduced the punishment on humanitarian ground. We are, therefore, of the opinion that the tribunal was justified in interfering with the order of the disciplinary authority and that of the appellate authority.

13. It is true that in A. Rajapandian's case and S.@@ EEEEEEEEEEEEEEEEEEEEEEEEEEEEE Subramaniam's case (supra), the Supreme Court has@@ EEEEEEEEEEEEEEEEEEEEEEEEEEEE reiterated that the tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. It has only power of judicial review of the administrative actions. But, this is qualified by adding a rider that the only consideration the tribunal has in its judicial review is whether the conclusion is based on evidence and supports the finding or whether the conclusion is based on no evidence.

14. We have no hesitation in holding that the report of the inquiry officer, which is affirmed by the disciplinary authority and the appellate authority was based on no evidence. The tribunal was, therefore, justified in interfering with the said orders. In this view of the matter, the petition will have to be dismissed and is dismissed as such.

(V.G. PALSHIKAR, J.)

(SMT. RANJANA DESAI, J.)